not be proper to allow an attachment. Thus where a witness fails to attend, and gives as his excuse that he knows no evidence relevant to the issue or that the subpœna was had merely for vexatious purposes, the court upon being convinced of these facts may order the subpœna to be set aside.[9] Such was the decision very properly made in a recent English case where subpœnas were served upon the Prime Minister and the Home Secretary. *Rex* v. *Baines*, 25 T. L. R. 79 (Eng., K. B., Nov. 18, 1908).

The ministers did not attempt to rely upon their official position as a ground for not appearing, and it is apparently settled in England that dignity of office exempts no one except the King from the service of a subpœna.[10] Since the President of the United States, like the Prime Minister of England, is not above the law, the best view is that a subpœna may properly be served upon him.[11] *A fortiori*, subpœnas may be served upon members of the cabinet[12] and congressmen.[13] But although dignity of office does not prevent the service of subpœnas and cannot properly be set up as an excuse for disregarding them, yet official duties may be a sufficient excuse for not appearing in court.[14] How far the courts should attempt to enforce obedience to subpœnas in such cases is largely a question of expediency. It is generally better that high officials should give their undivided attention to affairs of state than that they should be forced to attend trials of comparatively little importance. When a subpœna *duces tecum* is served, the President, or even a governor, is justified in refusing to bring the desired papers into court, because he is necessarily the judge as to whether their contents ought to be kept secret;[15] for the court could not pass upon this question unless their contents were first disclosed. When only attendance *ad testificandum* is required, executive privilege is not as well established either in reason or in practice, but as a general rule the court should assume that the executive is acting properly and that his absence is due to his official duties or engagements rather than to contempt of court.[16]

RECENT CASES.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — JURISDICTION OVER STATE RECEIVER. — A corporation was adjudged bankrupt on the ground that within four months a receiver had been appointed because of its insolvency, by a state court. On application by the trustee in bankruptcy the state court refused to direct its receiver to turn over to the trustee the property of the bankrupt. The trustee then applied to the bankruptcy court for a summary

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[9] *In re* Mundell, 52 L. J. Ch. 756. See also Dicas *v.* Lawson, 4 L. J. Exch. 80; Tinley *v.* Porter, 2 M. & W. 822; Steele *v.* Savory, 8 T. L. R. 94; Morgan *v.* Morgan, 16 Abb. Prac. (N. S.) 291.

[10] See Felkin *v.* Lord Herbert, 1 Dr. & Sm. 608; 1 Bl. Comm. ch. VII.

[11] See United States *v.* Burr, 25 Fed. Cas. 1.

[12] See People *v.* Smith, *supra*.

[13] Art. I, § 6 of the federal Constitution would prevent enforcement of a subpœna by attachment, while a congressman is in attendance at or going to or from a session of Congress. Respublica *v.* Duane, 4 Yeates (Pa.) 347; United States *v.* Thomas, 28 Fed. Cas. 79. But the tendency of the federal courts to give exemption even from the service of a subpœna during such time does not seem justified. See Miner *v.* Markham, 28 Fed. 387. *Contra*, Wilder *v.* Welsh, 1 McArthur (D. C.) 566.

[14] See Thompson *v.* German Valley Railroad Co., 22 N. J. Eq. 111.

[15] Thompson *v.* German Valley Railroad Co., *supra*.

[16] Appeal of Hartranft, 85 Pa. St. 433.

order on the receiver. *Held*, that he is entitled to the order. *In re Hecox*, 164 Fed. 823 (C. C. A., Eighth Circ.).

The amendment of 1903 to § 3 *a* of the Bankruptcy Act of 1898 declares it to be an act of bankruptcy that because of insolvency a receiver has been put in charge of property, under a state law. An adjudication of involuntary bankruptcy is conclusive of the commission of the acts of bankruptcy charged. *In re American Brewing Co.*, 112 Fed. 752. And there can be no collateral attack on the decision of the state court: it can only be reviewed in direct proceedings. *Edelstein* v. *United States*, 149 Fed. 636. As the Bankruptcy Act is a national law, passed pursuant to the power given to Congress by the Constitution, it suspends the operation of all conflicting state bankruptcy laws. *In re Gutwillig*, 90 Fed. 475. As is pointed out in the principal case, it is therefore a mere matter of judicial courtesy for the federal court to direct its trustee to petition the state court for an order. Indeed, if the state court should in any way try to retain such property in its possession the federal court could enforce its decree by means of physical force exercised through its official agents. See *Ex parte Siebold*, 100 U. S. 371, 395.

BILLS OF PEACE — BILL TO AVOID NUMEROUS ACTIONS OF TRESPASS AT LAW. — The plaintiff brought a bill to enjoin the defendant from continually trespassing on his land. The defendant did not deny the plaintiff's title, but demurred on the ground that the plaintiff had an adequate remedy at law. *Held*, that the demurrer be overruled. *Cragg* v. *Levinson*, 37 Nat. Corp. Rep. 614 (Ill., Sup. Ct., Dec. 15, 1908). See NOTES, p. 371.

CONFLICT OF LAWS — EFFECT AND PERFORMANCE OF CONTRACTS — NOTE MADE IN ONE STATE AND PAYABLE IN ANOTHER. — A promissory note was made in Kansas and payable in Missouri. *Held*, that its negotiability is governed by the law of Missouri. *Sykes* v. *Citizens' Nat. Bank*, 98 Pac. 206 (Kan.).

The negotiability of a note is generally governed by the law of the place where it is made. *Corbin* v. *Planters Nat. Bank*, 87 Va. 661. But there seems to be considerable conflict as to what law governs when the note is made in one place and payable in another. It has even been said, on the erroneous assumption that negotiability relates to the form of the remedy instead of to the nature of the contract, that the *lex fori* governs. See *Roads* v. *Webb*, 91 Me. 406. And it has been held that the parties may elect to be governed by the law of either jurisdiction. *Arnold* v. *Potter*, 22 Ia. 194. And that the naming of a place for payment shows *prima facie* intent to be governed by that law. *Shoe and Leather Nat. Bank* v. *Wood*, 142 Mass. 563. The weight of authority is with the main case that the law of the place of payment governs in the absence of express stipulation to the contrary. *Brown* v. *Gates*, 120 Wis. 349. The correct view, it seems, is that the law of the place where the note is made should govern. *Ory* v. *Winter*, 4 Mart. (N. S.) (La.) 277; 2 Beale, Cas. Confl., 511 and note.

CONFLICT OF LAWS — LEGITIMACY AND ADOPTION — EXTRA-TERRITORIAL EFFECT OF ADOPTION. — A of Georgia adopted B of Georgia, and died leaving land in Alabama. B claimed that he was entitled to succeed to this land. By a statute in Georgia an adopted child gained the right of inheritance. By a statute in Alabama adoption gave the person adopted the right to inherit, but the adoption was required to be by acknowledgment and registration in the probate court. *Held*, that B is not entitled to the land. *Brown* v. *Finley*, 47 So. 577 (Ala.). See NOTES, p. 372.

CONSTITUTIONAL LAW — TRIAL BY JURY — COMPULSORY REFERENCE OF ACCOUNTS IN CIVIL CASE. — An action in which a counterclaim involved a long examination of accounts was referred over the plaintiff's objection. *Held*, that this compulsory reference is unconstitutional because it denies the plaintiff